

Senate File 457 - Introduced

SENATE FILE 457
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1056)

A BILL FOR

1 An Act relating to the possession and carrying of weapons and
2 persons prohibited from possessing or receiving firearms due
3 to mental health court orders or judgments and including
4 effective date and applicability provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 483A.36, Code 2011, is amended to read
2 as follows:

3 **483A.36 Manner of conveyance.**

4 A person, ~~except as permitted by law,~~ shall not have or carry
5 a gun in or on a vehicle on a public highway, unless the gun is
6 taken down or totally contained in a securely fastened case,
7 and its barrels and attached magazines are unloaded.

8 Sec. 2. Section 724.4C, Code 2011, is amended by striking
9 the section and inserting in lieu thereof the following:

10 **724.4C Permit to carry — validity — intoxication.**

11 1. A person, who carries a dangerous weapon of a type or
12 in a manner that requires the person to hold a valid permit to
13 carry weapons under circumstances which give reasonable grounds
14 to believe that the person is intoxicated, is deemed to have
15 given consent to the withdrawal of specimens of the person's
16 blood, breath, or urine and to a chemical test or tests of
17 the specimens for the purpose of determining the alcohol
18 concentration or presence of a controlled substance or other
19 drugs.

20 2. The withdrawal of the body substances and the test or
21 tests shall be administered at the written request of a peace
22 officer having reasonable grounds to believe that a person,
23 who carries a dangerous weapon of a type or in a manner that
24 requires a person to hold a valid permit to carry weapons, is
25 intoxicated.

26 3. *a.* The peace officer shall determine which of the three
27 substances, breath, blood, or urine, shall be tested.

28 *b.* Refusal to submit to a chemical test of urine or breath
29 is deemed a refusal to submit. A refusal to submit to a
30 chemical test of blood is not deemed a refusal to submit, but
31 in that case, the peace officer shall then determine which one
32 of the other two substances shall be tested and shall offer the
33 test.

34 *c.* If the peace officer fails to offer a test within two
35 hours after a preliminary screening test is administered or

1 refused or the arrest is made, whichever occurs first, a person
2 shall not be required to submit to a test.

3 4. Notwithstanding subsection 3, if the peace officer has
4 reasonable grounds to believe that the person was under the
5 influence of a controlled substance, a drug other than alcohol,
6 or a combination of alcohol and another drug, a blood or urine
7 test shall be required even after another type of test has been
8 administered. Refusal to submit to a chemical test of urine
9 or blood requested under this subsection shall be considered a
10 test refusal.

11 5. If a person refuses to submit to chemical testing, a test
12 shall not be given, and the peace officer who requested such
13 test shall properly document the refusal, and upon such refusal
14 to test, a weapons permit issued under this chapter shall be
15 invalid.

16 Sec. 3. Section 724.9, subsection 2, unnumbered paragraph
17 1, Code 2011, is amended to read as follows:

18 Evidence of qualification under ~~this section~~ subsection 1
19 may be documented by any of the following:

20 Sec. 4. Section 724.9, Code 2011, is amended by adding the
21 following new subsections:

22 NEW SUBSECTION. 2A. In addition to the firearm safety
23 requirement in subsection 1, an applicant for a new permit to
24 carry weapons shall qualify on a firing range within twelve
25 months prior to the application under the supervision of an
26 instructor certified by the national rifle association or the
27 department of public safety or another state's department of
28 public safety, state police department, or similar certifying
29 body. This subsection shall not apply to renewal applications.

30 NEW SUBSECTION. 2B. Firearm training courses offered
31 through the internet do not satisfy the training requirements
32 set forth in this section.

33 Sec. 5. Section 724.10, subsection 2, Code 2011, is amended
34 to read as follows:

35 2. The issuing officer, upon receipt of an ~~initial~~ a new

1 or renewal application under this section, shall immediately
2 conduct a background check concerning each applicant by
3 obtaining criminal history data from the department of public
4 safety which shall include an inquiry of the national instant
5 criminal background system maintained by the federal bureau of
6 investigation or any successor agency.

7 Sec. 6. Section 724.11, subsection 1, Code 2011, is amended
8 to read as follows:

9 1. Applications for permits to carry weapons shall be made
10 to the sheriff of the county in which the applicant resides.
11 Applications for professional permits to carry weapons for
12 persons who are nonresidents of the state, or whose need to
13 go armed arises out of employment by the state, shall be made
14 to the commissioner of public safety. In either case, the
15 sheriff or commissioner, before issuing the permit, shall
16 determine that the requirements of sections 724.6 to 724.10
17 have been satisfied. ~~However, for renewal of a permit the~~
18 ~~training program requirements in section 724.9, subsection 1,~~
19 ~~shall apply or the renewal applicant may choose to qualify on a~~
20 ~~firing range under the supervision of an instructor certified~~
21 ~~by the national rifle association or the department of public~~
22 ~~safety or another state's department of public safety, state~~
23 ~~police department, or similar certifying body. Such training~~
24 ~~or qualification must occur within the twelve-month period~~
25 ~~prior to the expiration of the applicant's current permit.~~

26 Sec. 7. Section 724.11, subsection 4, Code 2011, is amended
27 to read as follows:

28 4. The sheriff or commissioner of public safety shall
29 approve or deny ~~an initial~~ a new or renewal application
30 submitted under this section within thirty days of receipt of
31 the application. A person whose application for a permit under
32 this chapter is denied may seek review of the denial under
33 section 724.21A. The failure to approve or deny ~~an initial~~
34 a new or renewal application shall result in a decision of
35 approval.

1 Sec. 8. NEW SECTION. 724.20A Criminal trespass — carrying
2 weapons.

3 A person who possesses a valid permit to carry weapons who
4 is convicted of a second or subsequent violation of section
5 716.8 due to the carrying of weapons where prohibited shall be
6 subject to a permit revocation period of one year from the date
7 of the conviction.

8 Sec. 9. Section 724.31, Code 2011, is amended to read as
9 follows:

10 ~~724.31 Persons subject to mental and substance abuse~~
11 ~~health-related orders or commitments — firearms — restoration~~
12 ~~of rights — reports~~ prohibited from possessing or receiving
13 firearms — mental health court orders or judgments — relief
14 from disabilities — report.

15 1. A court order or judgment referred to in subsection 2
16 that results in a prohibition against shipping, possessing,
17 receiving, or transporting or causing the transport of firearms
18 or ammunition pursuant to 18 U.S.C. § 922(d)(4) and (g)(4)
19 shall include information informing the person who is the
20 subject of the order or judgment not to ship, possess, receive,
21 or transport or cause the transport of firearms or ammunition.
22 The clerk of the district court shall forward only such
23 information as is necessary to identify a person subject to ~~an~~
24 ~~order in subsection 2~~ such order or judgment to the department
25 of public safety, which in turn shall forward the information
26 to the federal bureau of investigation or its successor agency
27 for the sole purpose of inclusion in the national instant
28 criminal background check system database.

29 2. A court order or judgment that does any of the following
30 is subject to this section:

31 a. Orders commitment pursuant to section 125.84.

32 b. Orders commitment pursuant to section 222.31.

33 c. Orders commitment pursuant to section 229.14.

34 d. Finds a defendant incompetent to stand trial pursuant to
35 section 812.5.

1 e. Appoints a guardian or conservator pursuant to section
2 231E.6.

3 f. Finds a defendant not guilty by reason of insanity
4 pursuant to section 701.4.

5 3. a. A person who is the subject of a court order listed
6 in subsection 2 and who has been released from commitment
7 an order or judgment that resulted in a prohibition against
8 shipping, possessing, receiving, or transporting or causing
9 the transport of firearms or ammunition pursuant to 18 U.S.C.
10 § 922(d)(4) and (g)(4) may petition the court that issued the
11 order or the court in the county where the person resides no
12 earlier than two years from the date of the issuance of the
13 order for relief from the disabilities imposed by 18 U.S.C. §
14 922(d)(4) and (g)(4) if all of the following apply:

15 (1) The order or judgment was issued by an Iowa court.

16 (2) The petition for relief from disabilities is filed at
17 least two years after the issuance of the order or judgment
18 that resulted in a prohibition against shipping, possessing,
19 receiving, or transporting or causing the transport of firearms
20 or ammunition pursuant to 18 U.S.C. § 922(d)(4) and (g)(4).

21 b. A copy of the petition shall also be served on the
22 director of human services and the county attorney at the
23 county attorney's office of the county in which the original
24 order occurred, and the director or the county attorney may
25 appear, support, object to, and present evidence relevant to
26 the relief sought by the petitioner. A court considering a
27 petition under this section shall receive evidence concerning
28 all of the following:

29 (1) The circumstances surrounding the original issuance
30 of the order ~~in subsection 2~~ or judgment that resulted in
31 a prohibition against shipping, possessing, receiving, or
32 transporting or causing the transport of firearms or ammunition
33 pursuant to 18 U.S.C. § 922 (d)(4) and (g)(4).

34 (2) The petitioner's record, which must include, at a
35 minimum, the petitioner's mental health and criminal history.

1 (3) The petitioner's reputation ~~and~~, developed, at a
2 minimum, through character witness statements, testimony, and
3 other character evidence.

4 (4) Any changes in the petitioner's condition or
5 circumstances since the issuance of the order ~~in subsection~~
6 2 or judgment that resulted in a prohibition against shipping,
7 possessing, receiving, or transporting or causing the transport
8 of firearms or ammunition pursuant to 18 U.S.C. § 922(d)(4) and
9 (g)(4) that are relevant to the relief sought.

10 ~~b.~~ c. The court shall grant a petition filed pursuant to
11 paragraph "a" if the court finds by a preponderance of the
12 evidence that the petitioner will not be likely to act in a
13 manner dangerous to the public safety and that the granting
14 of the relief would not be contrary to the public interest.
15 The petitioner may appeal a denial of the requested relief and
16 the review shall be de novo. A person may file a petition
17 for relief under this subsection not more than once every two
18 years.

19 ~~e.~~ d. If a court issues an order granting a petition for
20 relief under paragraph "~~b~~" "c", the clerk of the district
21 court shall immediately forward only such information as is
22 necessary to identify a person granted relief to the department
23 of public safety which, upon receipt, shall immediately forward
24 such information as is necessary to the federal bureau of
25 investigation or its successor agency to update the national
26 instant criminal background check system database with the
27 relief from disabilities.

28 Sec. 10. APPLICABILITY. The state court administrator
29 shall coordinate with the department of public safety to
30 forward only such information from the judicial branch as
31 is necessary to identify a person subject to an order or
32 judgment specified in section 724.31, subsection 2, for any
33 such order or judgment that was issued prior to January 1,
34 2011, and which is available electronically in the Iowa court
35 information system. Such information shall be forwarded to

1 the department of public safety, which in turn shall forward
2 the information to the federal bureau of investigation or its
3 successor agency for the sole purpose of inclusion in the
4 national instant criminal background check system database, as
5 soon as practical, but not later than four months after the
6 effective date of this Act. Within five days of completion of
7 the forwarding of information required by this section of this
8 Act, the department of public safety shall give notice to the
9 Iowa Code editor that the requirements of this section of this
10 Act have been fulfilled.

11 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
12 immediate importance, takes effect upon enactment.

13 EXPLANATION

14 This bill relates to permits to carry weapons and annual
15 permits to acquire pistols and revolvers.

16 The bill provides that a person shall not have or carry a
17 gun in or on a vehicle on a public highway, unless the gun is
18 contained in a securely fastened case, and its barrels and
19 attached magazines are unloaded.

20 The bill provides that a person, who carries a dangerous
21 weapon of a type or in a manner that requires the person to hold
22 a valid permit to carry weapons under circumstances which give
23 reasonable grounds to believe that the person is intoxicated,
24 is deemed to have given consent to the withdrawal of specimens
25 of the person's blood, breath, or urine and to a chemical test
26 or tests of the specimens for the purpose of determining the
27 alcohol concentration or presence of a controlled substance or
28 other drugs. The withdrawal of the body substances and the
29 test or tests shall be administered at the written request of
30 a peace officer having reasonable grounds to believe that a
31 person, who carries a dangerous weapon of a type or in a manner
32 that requires a person to hold a valid permit to carry weapons,
33 is intoxicated. Refusal to submit to a chemical test of urine
34 or breath is deemed a refusal to submit. A refusal to submit
35 to a chemical test of blood is not deemed a refusal to submit,

1 but in that case, the peace officer shall then determine which
2 one of the other two substances shall be tested and shall offer
3 the test. If the peace officer fails to offer a test within
4 two hours after a preliminary screening test is administered or
5 refused or the arrest is made, whichever occurs first, a person
6 shall not be required to submit to a test. If the peace officer
7 has reasonable grounds to believe that the person was under the
8 influence of a controlled substance, a drug other than alcohol,
9 or a combination of alcohol and another drug, a blood or urine
10 test shall be required even after another type of test has
11 been administered. Refusal to submit to such a chemical test
12 of urine or blood shall be considered a test refusal. If a
13 person refuses to submit to chemical testing, a test shall not
14 be given, and the peace officer who requested such test shall
15 document the refusal, and upon such refusal to test, a weapons
16 permit issued under Code chapter 724 shall be invalid.

17 The bill amends current firearm training requirements an
18 applicant for a new permit to carry weapons must satisfy to
19 be issued a permit to carry weapons under Code chapter 724
20 to include the requirement that such applicant qualify on a
21 firing range within 12 months prior to the application under
22 the supervision of an instructor certified by the national
23 rifle association or the department of public safety or another
24 state's department of public safety, state police department,
25 or similar certifying body. This requirement applies to only
26 new applicants and not renewal applicants. The bill specifies
27 that internet firearm training courses do not satisfy the
28 firearm training requirements in Code section 724.9.

29 The bill provides that a person who possesses a valid
30 permit to carry weapons, and who is convicted of a second or
31 subsequent violation of Code section 716.8 relating to trespass
32 due to the carrying of weapons where prohibited, shall be
33 subject to a permit revocation period of one year from the date
34 of the conviction.

35 The bill amends Code section 724.31 relating to prohibiting

1 a person who is subject to a mental or substance abuse related
2 court order or commitment order from shipping, possessing,
3 receiving, or transporting or causing the transport of firearms
4 or ammunition pursuant to 18 U.S.C. § 922(d)(4) and (g)(4) and
5 relating to the restoration of the person's right to ship,
6 possess, receive, or transport, or cause the transport of
7 firearms or ammunition upon the person's petition to the court
8 for relief. The bill includes a person who is subject to a
9 guardianship or conservatorship and a criminal defendant found
10 guilty by reason of insanity as persons who are subject to the
11 current prohibition against shipping, possessing, receiving, or
12 transporting or causing the transport of firearms or ammunition
13 pursuant to 18 U.S.C. § 922(d)(4) and (g)(4). The bill further
14 specifies factors required for a petition for relief as well as
15 factors the court may consider in determining whether to grant
16 the requested relief.

17 The bill requires the state court administrator to
18 coordinate with the department of public safety to forward only
19 such information from the judicial branch as is necessary to
20 identify a person subject to an order or judgment specified
21 in Code section 724.31, as amended in the bill, for any such
22 order or judgment that was issued prior to January 1, 2011, and
23 which is available electronically in the Iowa court information
24 system. Such information shall be forwarded to the department
25 of public safety, which in turn shall forward the information
26 to the federal bureau of investigation for inclusion in the
27 national instant criminal background check system database.
28 The bill also requires the department of public safety to give
29 notice to the Iowa Code editor that such requirements have been
30 fulfilled.

31 The bill takes effect upon enactment.